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negligently setting fire to and destroying the plaintiff's mill and contents, judgment should be rendered for the plaintiff, notwithstanding the defendant had the best of engines, the most approved spark-arresters, and other appliances, and the most skillful management, when the evidence tends to show that the defendant permitted combustible matter to accumulate on its right of way; that the defendant's engines were in the habit of emitting sparks; that an engine and train passed at an opportune time to cause the fire; that the progress of the fire was from defendant's right of way to the property burned; that the wind was blowing in that direction; and that the side of the mill next to the railroad was the first to burn.

MUTUAL LIFE INSURANCE CO. OF NEW YORK v. OLIVER.—Decided at Richmond, December 16, 1897.—*Riely, J. Absent, Cardwell and Harrison, JJ* :

1. PLEADING—*Declaration—Sufficiency of.* A declaration is sufficient which sets out the contract sued on, states when and where it was made, and alleges all the circumstances necessary to support the action with sufficient fullness, clearness, and precision to apprise the defendant of the grounds of the plaintiff's claim, and to enable the defendant to plead to it.

2. EVIDENCE—*Witnesses—Contract with corporation—Original parties—Competency of agent—Test of competency.* In a contract of insurance the original parties to the contract are the assured and the insurance company, and, in an action on the policy, the agent of the company who procured the policy is a competent witness on behalf of the company, although the assured be dead at the time of trial. He was competent at common law, and the statute has not imposed any restriction on his competency. The test of competency under the statute is not the *fact* to which the witness will testify, but the contract or other transaction which is the subject of investigation. Agents are not within the exception to competency created by statute of persons generally to be witnesses. There is no disqualification, express or implied, in the statute, of a mere agent in any case.

3. INSURANCE—*Payment of premium—Estoppel—Waiver—Evidence.* Where a policy of insurance has not been delivered, and the blank in the application for the amount of the premium has not been filled, there is no such unequivocal acknowledgment of the receipt of the premium, nor any such acknowledgment of its receipt, as will estop the company from showing by parol evidence that the premium has not been paid, nor the payment waived.

4. EVIDENCE—*Witness—Incompetency—Bill of exception—Objection on other grounds, but excluded for incompetency.* When a witness is excluded on the ground of incompetency it is not necessary to state in the bill of exception what is expected to be proved by him. The objection to his competency implies that his evidence would be unfavorable to the party objecting. This is an exception to the general rule. If the witness is excluded on the ground of incompetency, it is immaterial that the objection to questions propounded to him was founded on other grounds.